

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

July 25, 2005

IN RE:

APPLICATION BY NETWORK US, INC. D/B/A CA
AFFINITY AND MOTION TELECOM, INC. FOR
APPROVAL OF AN ASSET PURCHASE AGREEMENT

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DOCKET NO.
04-00242

ORDER APPROVING TRANSFER OF ASSETS

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on May 16, 2005 for consideration of the *Application* filed by Network US, Inc. d/b/a CA Affinity ("NUS") and Motion Telecom, Inc. ("Motion") (collectively "Applicants"). The Applicants sought approval of the transfer of substantially all of Motion's telecommunications assets, including its customer accounts, to NUS and cancellation of Motion's Certificate of Public Convenience and Necessity ("CCN")

Background

NUS is a privately held Nevada company and was granted a CCN to provide telecommunications services in Tennessee on September 25, 2001 by an order in TRA Docket No. 01-00784

Motion is a privately held Colorado corporation and was granted authority to provide telecommunications services in Tennessee by an order dated October 14, 2003 in TRA Docket No. 03-00437

Application

In the *Application* filed with the TRA on August 10, 2004, the Applicants request TRA

approval of a transaction involving the transfer of substantially all telecommunications assets of Motion to NUS. The Applicants also request cancellation of Motion's CCN.

The *Application* states that approval of the agreement will be beneficial to the Applicants and to Motion's customers. The Application also state that the agreement will create a heightened level of operating efficiency, which will serve to enhance the overall ability of NUS to compete in the marketplace and to provide telecommunications services for a greater number of consumers at competitive rates

According to the *Application*, the technical, managerial, and financial personnel of Motion will assist with the transition; and the technical, managerial, and financial personnel of NUS will continue to serve the transferred customers with the same level of expertise following the transfer. Additionally, the *Application* states that NUS is well-qualified to consummate the transaction, and Motion customers will not experience any interruption of service during the transition.¹ The Applicants assert that the transfer will enhance the overall capacity of NUS to compete in the marketplace and provide telecommunications services for a greater number of Tennessee consumers at competitive rates

Statutory and Regulatory Framework

The Applicants submitted their *Application* pursuant to Tenn. Code Ann. § 65-4-112 (2004). Tenn. Code Ann. § 65-4-112(a) (2004) governs TRA approval of mergers or consolidations between two or more public utilities holding CCNs in the State of Tennessee. It provides as follows:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Additionally, when a customer base is transferred between two or more telecommunications

¹ NUS's managerial profiles and financial statements for the year 2003 are attached to the *Application* in support of the agreement

service providers, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met

2. A notification letter, pre-approved by the Authority, shall be sent by the current provider of telecommunications service to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter unless the customer selects another telecommunications service provider. The notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. For good cause shown, the Authority may waive any requirement of 1220-4-2-.56(2)(d)(2) or order any requirement thereof to be fulfilled by the acquiring provider. Good cause includes, among other things, evidence that the current provider is no longer providing service in Tennessee.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

May 16, 2005 Authority Conference

At the May 16, 2005 Authority Conference, the panel noted that the proposed customer notification letter did not comply with TRA Rule 1220-4-2-.56(2)(d). Specifically, the letter had not yet been mailed although the transaction that involved the transfer of Motion's customer base closed on December 31, 2004. Additionally, the letter did not articulate the consumer protections afforded by Authority rules when a customer base is transferred to another carrier.² The panel determined that it was in the consumer's best interest that a customer notification letter be sent to inform consumers of their rights regarding the transfer. Accordingly, the panel voted unanimously to approve the

² The TRA rules require that the acquiring carrier pay transfer fees and afford a thirty-day notice of rate increases within the first ninety days after the transaction occurs.

Application pursuant to a finding of compliance with the requirements of Tenn. Code Ann § 65-4-112 (2004) and to approve cancellation of Motion's CCN contingent upon TRA approval of a customer notification letter that complies with TRA Rule 1220-4-2- 56(2)(d)(3).

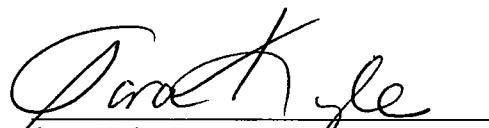
IT IS THEREFORE ORDERED THAT:

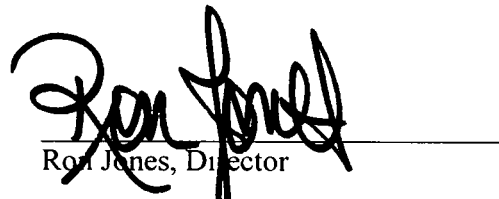
1 The *Application* is approved contingent upon TRA approval of a customer notification letter that complies with TRA Rule 1220-4-2- 56(2)(d)(3)

2 The proposed transfer as described in the *Application* and discussed herein is approved contingent upon TRA approval of a customer notification letter that complies with TRA Rule 1220-4-2-.56(2)(d)(3).

3 Motion's CCN is cancelled contingent upon TRA approval of a customer notification letter that complies with TRA Rule 1220-4-2-.56(2)(d)(3)


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director